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OFFICE OF PETITIONS

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| In re Application of | : | |
| Trussell, et al. | : | |
| Application No. 09/879,928 | : | ON PETITION |
| Filed: June 14, 2001 | : | |
| Attorney Docket No. NVL-3247 | : | |

This is a decision on the petition under 37 CFR 1.183, filed September 15, 2004, to waive the requirements for an extension of time fee as set forth in 37 CFR 1.136(a) and 37 CFR 1.17(a).

The petition under 37 CFR 1.183 is **DISMISSED**.

On March 15, 2004, the Office mailed a non-final action. The Office action gave a facsimile number, 703-872-9306, to be used for transmissions. On May 12, 2004, petitioner faxed a response to 571-273-1664. Petitioner states that he believes this fax number was given to him during an April 29, 2004 interview with the Examiner (the fax number is the number for the Examiner's supervisor, Thomas Tom). According to petitioner, he contacted the Examiner during the last week of August and learned that no response had been received. Accordingly, petitioner re-transmitted the response to the 703-872-9306 number on September 7, 2004. To make the response timely petitioner obtained a three month extension of time.

37 CFR 1.136(a)(1) states, in relevant part:

If an applicant is required to reply within a nonstatutory or shortened statutory period time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set forth in § 1.17(a) are filed.

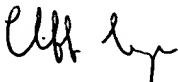
37 CFR 1.183 states:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

Petitioner has not demonstrated that this is an extraordinary situation where justice requires waiver of the rules. The March 15, 2004 Office action set forth the official facsimile number for facsimile transmissions. Accordingly, the instant scenario is one that could have been avoided with the reasonable exercise of due care. In addition, MPEP 501.02 states that, "[e]ffective December 1, 2003, all patent application related correspondence transmitted by facsimile **must** be directed to the central facsimile number, (703) 872-9306, with a few exceptions below. Replies to Office actions including after-final amendments that are transmitted by facsimile **must** be directed to the central facsimile number" (emphasis added). However, "[u]nofficial correspondence such as draft proposed amendments for interviews may continue to be transmitted by facsimile to the Technology Centers (TCs). Office personnel should not use their personal facsimile numbers for official application related correspondence." MPEP 501.02.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions